

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, NASHVILLE RESIDENT OFFICE

JOHNSTON FIRE SERVICES LLC

Respondent

and

Case Nos. 10-CA-175681
10-CA-177542
10-RC-177308

ROAD SPRINKLERS FITTERS LOCAL UNION 669

Charging Party

**RESPONDENT JOHNSTON FIRE SERVICES LLC'S MOTION FOR PERMISSION TO
FILE UNTIMELY ANSWERING BRIEF TO CHARGING PARTY'S EXCEPTIONS TO
THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Pursuant to Section 102.2 (d), of the Board's Rules and Regulations, Counsel for the Respondent requests permission to file late, the Answering Brief to Charging Party's Exceptions to the Administrative Law Judge's Decision submitted along with this motion. Section 102.2(d) permits late-filed documents if filed within a "reasonable time after the time prescribed by these Rules" upon good cause shown based on excusable neglect and when no undue prejudice would result. As set forth below, the undersigned request for the late filing meets this standard.

1. The ALJ issued a decision in the above matter on March 3, 2017 recommending that the consolidated complaint against Respondent be dismissed because he found no violation of the Act. Exceptions to the ALJ's Decision were originally due on March 31, 2017. Without objection of the undersigned, Counsel for the Union requested and received an extension of time to submit exceptions to April 14, 2017. Thereafter, without objection from the undersigned, Counsel for the General Counsel requested and received an extension until April 28, 2017 to file

exceptions and supporting brief. The extended date was made applicable to all parties desiring to file exceptions.

2. The Charging Party filed exceptions and a supporting brief on April 28, 2017. At that time, the undersigned instructed my legal assistant, Julie Driscoll, to enter tickling deadlines for a response to the Charging Party's brief in support of its exceptions. (See Affidavit of Julie Driscoll, ¶ 1.)

3. As it turns out, Ms. Driscoll inadvertently failed to enter any ticklers for the response date.

4. The undersigned has been involved in the formation and negotiation of an Employee Owned Stock Plan ("ESOP") wherein the undersigned's client is selling their interest in a business to the ESOP. The undertaking has been substantial and has consumed the undersigned's time since late March up through the present date. Given the time this project has consumed, the undersigned did not follow up with Ms. Driscoll to ensure that the time period to file a responsive brief to the exceptions had been determined and diaried.

5. On Monday, May 15, the undersigned inquired of Ms. Driscoll of the date the response brief in the above matter was due. I advised that I had not seen any ticklers or reminders on the issue and was concerned when the brief was due. After inquiry by Ms. Driscoll, it was determined that the response was actually due on Friday, May 12, two days earlier in accordance with Section 102.2(b)(1) of the Board's Rules.

6. The undersigned has limited experience in practicing before the NLRB and was not aware that there was a 14 day time period for an answering brief to exceptions. However, the undersigned relied upon Ms. Driscoll to appropriately diary the deadline date which was not done out of inadvertence.

7. Upon learning of the expired deadline, the undersigned filed a motion for extension of time but as the Associate Executive Secretary pointed out in her letter denying the motion, such request must be filed no later than the date which the document is due in accordance with Section 102.2(c) of the Board's Rules.

8. However, Section 102(d) of the Board's Rules specifically addresses late filed documents. In accordance with this rule, briefs may be accepted for filing after the time prescribed by the Rules within a reasonable time upon good cause shown based on excusable neglect and when no undue prejudice would result. Here, this standard is clearly met.

9. The undersigned as well as Ms. Driscoll have been worked under a substantial work load in the past few months. No one is perfect and mistakes will happen. This is one of those times when a "perfect storm" hit and the matter fell through the cracks.

10. No party can reasonably argue prejudice. The Charging Party has had almost a full month to file exceptions and a supporting brief from the date they were originally due. If the answering brief is accepted, Respondent will have had only a period of 19 days in which to compile the brief. If accepted, the brief will be untimely by a period of only 5 days and only 3 days expired from the date it was learned the brief was due on May 12. The answering brief submitted herein was certainly filed within a "reasonable time" after the prescribed time.

11. Attached hereto are the affidavits of the undersigned as well as Ms. Driscoll as required by Section 102.2(d) (2) of the Rule.

WHEREFORE, the undersigned respectfully submits that the motion should be granted and that the standards for late filing under Section 102.2(d) are satisfied.

Respectfully submitted,

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& BLANKENSHIP, LLP
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By /s/David L Kelly
David L Kelly
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Attorneys for Respondent Johnston Fire Services LLC

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed on May 17, 2017 utilizing the National Labor Relations Board's E-Filing system, resulting in timely service of same, and was otherwise served via electronic mail upon the following:

David O'Brien Suetholz, Esq.
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Attorney for Road Sprinkler Fitters Local 669

DATED this 17th day of May, 2017

/s/David L Kelly
David L Kelly

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, NASHVILLE RESIDENT OFFICE

JOHNSTON FIRE SERVICES LLC

And

Case No. 10-CA-175681

Case No. 10-CA-177542

ROAD SPRINKLERS FITTERS LOCAL UNION 669

AFFIDAVIT

I, the undersigned, being first duly sworn on oath, depose and state as follows:

1. My name is David L Kelly. I am the attorney of record for Respondent, Johnston Fire Services LLC in the above matter.

2. My paralegal is Julie Driscoll. When the Charging Party filed its exceptions and supporting brief on April 28, 2017, I requested that Ms. Driscoll determine the appropriate response time and to enter ticklers that would remind me of such due date. I assumed Ms. Driscoll had done this but I learned on May 15, 2017, that such was not done.

3. On Monday, May 15, I inquired with Ms. Driscoll that I had not seen any reminders of the response date. She informed me she would check on it but then informed me that in actuality, the time for a response was past due and that it was due on Friday, May 12, 2017.

4. My time has been consumed on an unrelated commercial transaction involving the formation of an ESOP and the sale of my client's business to the ESOP. Given the time commitments for this project, I did not follow up with Ms. Driscoll to ensure that she had diaried the response date appropriately.

5. I have somewhat limited experience in practicing before the NLRB. I was not specifically aware of the 14 day time period for filing an answering brief. However, I believed that Ms. Driscoll had appropriately diaried the response time. I did not learn until May 15, 2017 that she had failed to perform that task.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ David L Kelly
David L Kelly

STATE OF KENTUCKY)
)
COUNTY OF McCRACKEN)

The foregoing was sworn and acknowledged before me this 17th day of May, 2017, by
DAVID L KELLY.

My Commission expires: December 2, 2017
ID No. 501722

/s/ Nerissa Collins

NOTARY PUBLIC, STATE AT LARGE

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JOHNSTON FIRE SERVICES LLC

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Case No. 10-CA-175681

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ROAD SPRINKLERS FITTERS LOCAL UNION 669

AFFIDAVIT

I, the undersigned, being first duly sworn on oath, depose and state as follows:

1. That I am a paralegal for attorney David Kelly and am solely responsible for docketing and entering ticklers for deadlines in his cases.

2. That Mr. Kelly received the exceptions to the Administrative Law Judge's ruling filed by the Union and requested that I docket and enter ticklers for Respondent Johnston Fire Services LLC's response.

3. That due to other time-intensive tasks, I inadvertently failed to docket and file ticklers for Johnson Fire's response date.

4. On May 15, 2017, I realized that I had neither diaried nor entered ticklers for our response deadline. I called the NLRB and learned that our deadline to file a response to the Union's exceptions was Friday, May 12, 2017.

5. That had I entered the appropriate ticklers, Mr. Kelly would have been apprised of the upcoming deadline, and would have filed his timely response or filed for a timely extension of time to file a response.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Julie A. Driscoll

Julie A. Driscoll

STATE OF KENTUCKY)

)

COUNTY OF McCRACKEN)

The foregoing was sworn and acknowledged before me this 15th day of May, 2017, by JULIE A. DRISCOLL.

My Commission expires: December 2, 2017
ID No. 501722

/s/ Nerissa Collins

NOTARY PUBLIC, STATE AT LARGE